IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

METRO PASSBOOK, INC., a Michigan corporation, the true name of which is METRO PASSBOOK CORPORATION, a Michigan corporation, presently known as METRO CLUB, INC., a Michigan corporation,

Petitioner,

vs.

Court of Appeals No. 76-1831

METRO PASSBOOKS CORPORATION, a Pennsylvania corporation, the true name of which is METRO PASSBOOK, INCORPORATED, RICHARD NATOW and ALFRED KRAWITZ,

Respondents.
_____/

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Respondents make answer to the Petition as follows:

Respondents are satisfied with Petitioner's presentation of jurisdiction.

Question Presented

WAS RESPONDENT A JUNIOR USER OF A TRADEMARK ACTING IN BAD FAITH?

Statement of the Case

Throughout Petitioner's statement of the case, references are made to the trial court's findings without quotation or specific reference. Respondents believe certain references to those findings are misleading. Expressly, Respondents take issue with the reference to the trial court's conclusions relating to the "Metro name" appearing in paragraphs numbered B through D on pages 4 and 5 of Petitioner's brief. The trial court's Memorandum Opinion is 19 pages in length and is extremely detailed. The finding of the trial Court that relates to the issue presented by Petitioner appears on page 27 of Petitioner's brief as follows:

> "Yet, it must be clear from our pre-

vious finding, that defendants are not and have never been bound by a franchise agreement with plaintiff and that defendants could adopt 'Metro' for their own in Philadelphia. Plaintiff never operated in Philadelphia prior to 1973 and thus has no prior territorial claim there that is superior to that of defendants. In fact, plaintiff apparently acquiesced in defendants' use of the 'Metro' name. Defendants therefore have a right to sell their passbook in Philadelphia under the 'Metro' name and plaintiff does not. Plaintiff's attempt to do so violated this right." (emphasis supplied)

When the above excerpt from the trial court's Memorandum Opinion is added to the statement of the case, Respondents are satisfied.

Reason for Denying the Writ

THE DECISION OF THE SIXTH CIRCUIT COURT OF APPEALS IS IN ACCORDANCE WITH FEDERAL CASE AUTHORITY WHICH HAS HELD THAT A KNOWING JUNIOR USER MAY, WITH THE SENIOR USER"S ACQUIESCENCE, MAKE USE OF THE MARK.

Respondents have no quarrel with Petitioner's view of the law as set forth in pages 6 through 13 of its brief. However, the facts in the case do not support a theory of bad faith junior user. As noted in Respondents' Statement of the Case, the trial court found "...plaintiff apparently acquiesced in defendant's use of the 'Metro' name." (Trial Court's Memorandum Opinion found in Petitioner's Brief, page 27.) Since there was acquiescence, Petitioner's arguments are not worthy of consideration.

The case law relating to an acquiescing senior user may be found in E. F. Pritchard v Consumer's Brewing Company, 136 F 2d 512 (CA 6, 1943). In Pritchard, the court held that permission to use a mark in an area where the owner's goods have not become known and identified by his use, is a "naked license" and is void, resulting in abandonment by the

licensor of any right to the mark in such area.

Conclusion

There being no showing that the Sixth Circuit Court of Appeals has found contrary to federal case authority, the Petition should be denied.

Respectfully submitted,

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